

EXHIBIT 163

89-140-01-07808

Tab 19
REVISED**JCAR STAFF ANALYSIS**

Analyst: Alfonso Cano III **Date:** 10/15/01 mb
Agency: Department of Public Aid
Rule: Medical Payment (89 Ill Adm Code 140)
1st Notice: 6/29/01 **2nd Notice:** 9/27/01 **2nd Expires:** 11/10/01
New Part: **New Section:** **Amendatory:** X
Impact: **Economic** X **Mandate** None **Small Business** X
Agreements: **None** X **Technical** **Substantive**

SUMMARY

Codifies a pharmacy dispensing fee of \$4 for brand name drugs and \$5.10 for generic drugs. Eliminates wholesale acquisition cost (WAC) as one of the options for determining the maximum price DPA will pay for a drug. In the average wholesale price (AWP) option for determining DPA's maximum price, increases the percentage of deduction from 12% to 20% (generic drugs) and from 10% to 11% (brand name drugs).

PROPOSED ACTION

No Objection

COMMENTS

- 1) **STATUTORY AUTHORITY:** DPA is implementing these changes in reimbursement as a result of FY 02 appropriation agreements connected with PA 92-10/HB 3491 (MJ Madigan/Rauschenberger, effective 6/11/01).
- 2) **RELATED RULEMAKING:** DPA adopted an emergency rule creating the WAC as an alternative method of determining drug rates that was considered by JCAR in 1/01. JCAR first voted to suspend the emergency rule, then withdrew the Suspension when DPA offered firmer rationale for its adoption as a necessary cost containment measure. The permanent version of the rule was adopted after consideration at the 4/01 JCAR meeting. On that permanent rulemaking, JCAR recommended that DPA codify its pharmacy dispensing fee and DPA agreed. The dispensing fee portion of this rulemaking implements that agreement.

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CONFIDENTIAL

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- 3) **BACKGROUND:** The larger dispensing fee for generics is an attempt to create an incentive for dispensing less costly generic drugs. In addition, DPA pointed out that an HHS audit report comparing AWP's for brand name and generic drugs contributed to its decision to set the new deduction percentages that determine the prices it will pay for drugs. The audit reports that pharmacies can purchase generic and brand name drugs for 65% and 22%, respectively, less than the wholesale price. In this rulemaking, DPA is increasing the percentage deduction from the AWP for generic drugs from 12% to 20% and brand names from 10% to 11%. When deducted from the percentage discount allowed for generic and brand name drugs (64% and 22%), an overall profit of 44% is made by the pharmacy when generic drugs are dispensed and 11% when brand name drugs are dispensed. This profit disparity is another way this rule promotes the dispensing of generics over brand names.

DPA originally adopted WAC to minimize drug costs. The pharmaceutical industry continued to argue its case, increased appropriations were made available for the drug program, and, as a result, DPA is now eliminating WAC. This rulemaking will reinstate monies the industry was set to lose as a result of the WAC option.

- 4) **ECONOMIC IMPACT:** DPA says the FY 02 budget restored \$22 million to the pharmacy reimbursement program. DPA estimates that this program currently costs \$782.2 million.

STAFF CHECKLIST

Staff Initials and Date:

Statutory Authority Checked

Outstanding P.A. Checked

Other Federal or Policy Publications Checked

Other Pending Rules Checked

Unclosed Rules Checked

Related Rulemakings Checked

SUBSTANTIVE ISSUES

IDENTICAL FIRST NOTICE LINE NUMBERED VERSION

This copy of the agency's First Notice Submission is for use in creating the First Notice Changes document. In drafting the changes document, use the numbers on the left side of the page.

This version should be identical to the submission made by the agency, with the exceptions that errors in Source or Authority Notes may have been corrected; the format used is that of the electronic database (which is identical to SOS rules for codification), so formatting discrepancies will be corrected to conform with the IAPA; statutory citations will be handled correctly (Ill. Rev. Stat. in parentheses, ILCS in brackets, etc.); and any obvious misspellings revealed by an electronic spell check may have been corrected. If any such changes have been made, they will be noted here. If there is any problem, contact JCAR.

File: 89-140-01-07808

SECOND NOTICE CHANGES

Agency: Department of Public Aid

Rulemaking: Medical Payment (89 Ill Adm Code 140; 25 Ill Reg 7808)

Changes:

**CLOSING MEMORANDUM
PROPOSED RULEMAKING**

89-140-01-07808

89-140-01-08098

2/11/02

This proposed rulemaking appeared in the 6/29/01 *Illinois Register* and was considered at the Committee's 10/16/01 meeting. Staff did not propose, nor did the Committee issue, an Objection or a Recommendation to this proposed rulemaking.

The agency made no changes during the First Notice period. JCAR suggested and the agency made no changes in these rules during the Second Notice period. Also, during the Second Notice period, the agency made no changes that were suggested by the Administrative Code Division. No other changes were made in this rule. The adopted rulemaking as it appeared in the *Illinois Register* and as filed for the Illinois Administrative Code reflects all agreements between JCAR and the agency. In addition, a check of the adopted rulemaking did not disclose any unauthorized modifications by the agency.

The rulemaking became effective on 11/1/01 and appeared in the 11/16/01 edition of the *Illinois Register*. [It has a companion emergency rulemaking that was adopted in the 7/13/01 *Illinois Register*, effective 7/1/01. The emergency did not expire before this proposed rulemaking was adopted.] This file (89-140-01-07808) was combined with file #89-140-01-08098 at adoption. The combined file is saved under file #89-140-01-7808.

As no further action concerning these rules is necessary, it is recommended that this file be closed as of this date.

AC

2/11/02